

PT 97-1

Tax Type: PROPERTY TAX

Issue: Charitable Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

GALESBURG HISTORICAL)	
SOCIETY, INC.)	
)	
Applicant)	
)	Docket #94-48-15
v.)	
)	PIN #99-10-431-031
THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	

RECOMMENDATION FOR DISPOSITION

Appearances: Ms. Pamela S. Wilcox appeared on behalf of the Galesburg Historical Society, Inc.

Synopsis:

The hearing in this matter was held at 101 West Jefferson Street, Springfield, Illinois, on April 9, 1996, to determine whether or not Knox County Parcel No. 99-10-431-031 and the buildings thereon, should be exempt from real estate tax for the 1994 assessment year.

Mr. Raleigh Barnstead, president of the Galesburg Historical Society, Inc. (hereinafter referred to as the "Applicant"), was present and testified at the hearing on behalf of the applicant.

The issues in this matter include first, whether the applicant owned the parcel here in issue and the buildings thereon during the 1994 assessment year. The second issue is whether the applicant is a charitable organization. The final issue is whether this parcel and the buildings thereon were used for primarily charitable purposes during the 1994 assessment year. Following the submission of all of the evidence and a review of the record, it is determined

that the applicant owned this parcel and the buildings thereon during the entire 1994 assessment year. It is also determined that the applicant is not a charitable organization. Finally, it is determined that this parcel and the buildings thereon were not used for primarily charitable purposes during the 1994 assessment year.

Findings of Fact:

1. The position of the Illinois Department of Revenue (hereinafter referred to as the "Department") in this matter, namely that the parcel here in issue did not qualify for exemption during the 1994 assessment year, was established by the admission in evidence of Department's Exhibits numbered 1 through 5B.

2. On November 4, 1994, the Knox County Board of Review transmitted an Application for Property Tax Exemption To Board of Review concerning this parcel, for the 1994 assessment year, to the Department. (Dept. Ex. No. 1)

3. On November 9, 1995, the Department notified the applicant that it was denying the exemption of this parcel for the 1994 assessment year. (Dept. Ex. No. 2)

4. By a letter dated November 22, 1995, Mr. Raleigh Barnstead, the president of the applicant, requested a formal hearing in this matter. (Dept. Ex. No. 3)

5. The hearing held in this matter on April 9, 1996, was held pursuant to that request.

6. The applicant was incorporated on August 14, 1975, pursuant to the "General Not For Profit Corporation Act" of Illinois for purposes which included the following:

To promote research, exploration and discovery into and of the history of the City of Galesburg, Illinois, and of the early inhabitants of the land upon which the City is located.

To preserve artifacts, historical documents, data, letters, reminiscences, accounts and articles.

To acquire and restore to useful purposes, in support of these educational and charitable purposes, structures in the City of

Galesburg of historical or architectural merit and to encourage private citizens and land owners to do the same. (Dept. Ex. No. 3D)

7. The applicant acquired this parcel by a warranty deed dated March 11, 1977. (Dept. Ex. No. 1B)

8. During the 1994 assessment year, this parcel was improved with the Browning Mansion which the applicant had renovated, decorated and furnished in the Victorian manner. (Tr. pp. 14 & 15)

9. During 1994, the Browning Mansion was open for tours from Noon to 4 P.M. on Saturdays and Sundays, and at other times, by appointment. (Tr. p. 29)

10. During 1994, there was no charge to tour the Browning Mansion, however there was a glass donation box inside the front door where persons taking the tour could place a donation. (Tr. p. 30)

11. When the mansion is open, the first and second floors are available for tours except the four rooms of the caretaker's quarters on the second floor. (Tr. p. 33)

12. During 1994, Mr. and Mrs. Carlson were the caretakers for the applicant. They both performed services for the applicant which included cleaning and maintaining the house and yard. They were not paid a salary for performing their duties but were allowed to live in the caretaker's quarters, rent free. They were required to pay their own utilities. (Tr. pp. 32, 33 & 34 Dept. Ex. Nos. 3J & 3K)

13. During 1994, both Mr. and Mrs. Carlson had outside employment. Mr. Carlson worked for a guttering company and Mrs. Carlson worked at a motel. (Tr. p. 33)

14. In addition to the house tours, the mansion was used for monthly meetings of the applicant and also for several fundraisers. (Tr. p. 10)

15. The first of these fundraisers is the Chocolate Festival. This festival is held in February each year. The chocolate is donated by members of the community. The applicant charges \$6.00 per person to the people who attend this festival. No evidence was offered that the applicant ever waived or

reduced this \$6.00 person charge in cases of need. While the persons attending this festival are eating the different kinds of chocolate, they may also listen to talks on Victorian decoration, Victorian living and the ambience of the Victorian house. (Tr. pp. 16 & 17 and also 34 & 35)

16. In June of each year, during Railroad Days, a street fair, which is operated by the applicant, is held in front of the Browning Mansion. The applicant rents 40 or 50 booth spaces to antique and collectable vendors for \$35.00 per space. The vendors then use these spaces to set up stands and sell their various goods. No evidence was offered that the applicant ever waived or reduced this rental charge in cases of need. (Tr. pp. 17 and also 36 & 37)

17. The next event is the Heritage Festival. The applicant operates a horse drawn tram which tours various historical activities. The tram tours begin and end at the Browning Mansion. The charge to ride the tram is \$1.00 per person. No evidence was offered that this charge was ever waived or reduced in cases of need. (Tr. p. 18)

18. The applicant in 1994 also participated in the Taste of Galesburg fundraiser which took place in a downtown Galesburg parking lot. (Tr. p. 18)

19. The last fundraiser operated by the applicant each year in the mansion is known as The Victorian Lady Dressed For Christmas. A local lady decorates the mansion over the Thanksgiving weekend for the Christmas Holidays and operates a Victorian craft show in the mansion on each of the weekends between Thanksgiving and Christmas. After Christmas she comes in and takes down all of the decorations. A portion of her profits are then turned over to the applicant. (Tr. pp. 37, 38 & 39)

20. I find that a review of the financial reports submitted by the applicant to the Illinois Attorney General and the testimony concerning same, while somewhat confusing, clearly indicate that the primary source of the income of the applicant during the periods of those reports was from the proceeds of

the fundraisers previously described and not public or private charity. (Dept. Exs. 3B & 3C and Tr. pp. 22-26)

21. In addition to the mansion, there was also a carriage house on this parcel during 1994. The carriage house was damaged by fire during May of 1994. Before the fire, the carriage house was used by the applicant for the storage of the horse tram, ticket booths and spare shingles for the mansion. After the fire, these materials were moved to the basement of the mansion and the carriage house stood empty. (Tr. pp. 41 & 42)

22. While the applicant accepted donations for the museum tours, I find that it was not applicant's policy to waive or reduce fees at the various other activities held on this parcel.

23. I therefore find that the use of this parcel and the mansion thereon for fund raising and various sales activities were more than incidental.

Conclusions of Law:

Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

35 **ILCS** 200/15-65 provides in part as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

- (a) institutions of public charity;
- (b) beneficent and charitable organizations incorporated in any state of the United States....

It is well settled in Illinois, that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141

(1956); Milward v. Paschen, 16 Ill.2d 302 (1959); and Cook County Collector v. National College of Education, 41 Ill.App.3d 633 (1st Dist. 1976). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944) and People ex rel. Lloyd v. University of Illinois, 357 Ill. 369 (1934). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967); Girl Scouts of DuPage County Council, Inc. v. Department of Revenue, 189 Ill.App.3d 858 (2nd Dist. 1989) and Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986).

In the case of Methodist Old Peoples Home v. Korzen, 39 Ill.2d 149 (1968), the Illinois Supreme Court laid down six guidelines to be used in determining whether or not an organization is charitable. Those six guidelines read as follows: (1) the benefits derived are for an indefinite number of persons; (2) the organization has no capital, capital stock, or shareholders, and does not profit from the enterprise; (3) funds are derived mainly from private and public charity, and are held in trust for the objects and purposes expressed in its charter; (4) charity is dispensed to all who need and apply for it; (5) no obstacles are placed in the way of those seeking the benefits; and (6) the primary use of the property is for charitable purposes. Based on the foregoing findings of fact, I conclude that the applicant met guideline (2), since it was organized under the General Not For Profit Corporation Act of Illinois. I also conclude that the applicant failed to meet guideline (3) since its primary source of funds was found to be income from fundraisers and not public and private charity. Since the Chocolate Festival, antique booths at Railroad Days, the horse drawn tram at the Heritage Festival and the purchase of items at the Victorian Lady Dressed For Christmas all required the payment of an entrance fee or charges, and no evidence was offered that these fees and charges were ever

waived or reduced, I find that the applicant failed to meet guidelines (1), (4), and (5). Finally, I conclude in view of the foregoing, that the applicant failed to establish that this parcel was primarily used for charitable purposes during the 1994 assessment year.

Where, as here, the property as a whole was used for both exempt purposes and nonexempt purposes, the property will qualify for exemption only if the exempt use is the primary use, and the nonexempt use is merely incidental. Illinois Institute of Technology v. Skinner, 49 Ill.2d 59 (1971); and MacMurray College v. Wright, 38 Ill.2d 272 (1967). I have previously found that the nonexempt uses of this parcel were clearly more than incidental.

Concerning the various rentals of booth space, and the mansion, as well as the other fundraisers which took place on this parcel, the Illinois Courts have consistently held that property which is leased or otherwise used with a view to profit, does not qualify for exemption, even if the net income from said leasing or use for profit is used for exempt purposes. People ex rel. Baldwin v. Jessamine Withers Home, 312 Ill. 136 (1924). See also The Salvation Army v. Department of Revenue, 170 Ill.App.3d 336 (2nd Dist. 1988), leave to appeal denied. It should also be noted that if property, however owned, is let for return, it is used for profit, and so far as its liability for taxes is concerned, it is immaterial whether the owner makes a profit, or sustains a loss. Turnverein "Lincoln" v. Board of Appeals, 358 Ill. 135 (1934).

In order for a caretaker's quarters to be exempt, the first criteria is that the organization must be exempt. I have already determined that is not the case here. The Supreme Court in the case of MacMurray College v. Wright, 38 Ill.2d 272 (1967), considered whether or not faculty and staff housing owned by an exempt college, was used for school purposes. In that case, the Court applied a two-part test. First, were the residents of the houses required to live in their residences because of the nature of their exempt duties? Secondly, were they required to or did they perform any of their exempt duties

at those residences? The Courts have more recently applied the MacMurray tests to caretakers' residences in Benedictine Sisters of the Sacred Heart v. Department of Revenue, 155 Ill.App.3d 325 (2nd Dist. 1987); Lutheran Child and Family Services of Illinois v. Department of Revenue, 171 Ill.App.3d 420 (2nd Dist. 1987); and also Cantigny Trust v. Department of Revenue, 171 Ill.App.3d 1082 (2nd Dist. 1988). In this case, the applicant failed to meet these tests because it failed to establish that either the caretakers performed any exempt duties for the applicant, or that they performed any of their duties in their apartment.

Concerning the carriage house after the fire in May of 1994, when it was vacant and not used, in the Case of Antioch Missionary Baptist Church v. Rosewell, 119 Ill.App.3d 981 (1st Dist 1983), the Court held that property which was vacant and not used did not qualify for the statutory exemption as property used exclusively for exempt purposes.

I therefore conclude that Knox County Parcel No. 99-10-431-031 and the buildings thereon should remain on the tax rolls for the 1994 assessment year.

I consequently recommend that Knox County Parcel No. 99-10-431-031 and the buildings thereon remain on the tax rolls for the 1994 assessment year, and be assessed to the applicant, the Galesburg Historical Society, the owner thereof.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge
January 10, 1997